Court No.7

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL
CRIMINAL APPEAL NO. 534 OF 2001
(OLD NO. 78/1992)

Mohd. Haneef S/o Abdul Hameed,
R/o Lakri Parao, P.S. Kotdwara, Pauri Garhwal.

.....Appellant

Versus

State of Uttarakhand ...Opposite Party.

Sri G.S. Negi, learned Amicus Curiae for the appellant.
Sri Harish Pujari, learned Addl. GA for the State.

DATED: 05.11.2007

HON. DHARAM VEER, J.

This appeal, preferred under section 374(2) of The Code of Criminal Procedure, 1973 *(hereinafter to be referred as Cr.P.C.)* is directed against the judgment and order dated 4.12.1991 passed by Sessions Judge, Pauri Garhwal in Sessions Trial No.22-A of 1988, State Vs. Haneef, whereby the learned Sessions Judge has acquitted the appellant under Sections 302 of the Indian Penal Code, 1860 *(hereinafter to be referred as* IPC) read with section 34 I.P.C., 394 I.P.C. & 452 I.P.C. and convicted the appellant under Section 412 I.P.C. and awarded a sentence for three years' R.I.

2. In brief the prosecution case is that a robbery along with murder had taken place at the house of Uttam Singh son of Chandan Singh village Jhatri, Patti Silla, in the night of 11th May 1988 at about 9:00 P.M. on that night the complainant Uttam Singh had gone to see some play in Dadamandi and stayed there in that night. His mother, two sisters and father-in-law of one sister namely Sidhi Singh was at the house. At about 9:00 P.M. in the night when they were going to sleep, three unknown persons armed with Khukhari reached there and they entered the house and committed robbery. They also

caused injuries to his mother and Sidhi Singh. The looted property was also mentioned in the report which is as under:- 1. One pair of gold earrings about Rs. 3000/- 2. Five pair of silver payjab about Rs. 550/- 3. Two gold nosepins about Rs.1600/- 4. Philips Radio of Rs.375/-5. One table watch H.E.S. about Rs. 100/- 6. One plastic cell watch of hand Rs. 30/- 7. Cash notes of Rs. 1350/- 8. 3 Kilo gram Ghee in three separate milk boxes Rs. 150/-9. Two bed sheets of white & black print Rs. 100/- 10. Three green Sarees, one was of yellow colour and five dhoti of cotton Rs.600/-. Injured Sidhi Singh died due to the injuries at about 4:00 A.M. The house of the complainant was at distance from village Abadi and the miscreants had latched the door from out side due to the reason nobody could come out from the house. At about 6:00 A.M. in the morning on 12.05.1988 Uttam Singh reached to the house and opened the latch of his door and entered the house and saw his mother injured and Sidhi Singh dead. He enquired about the occurrence from his mother and sisters and on the information received from his mother and sisters he lodged a report at Patwari Chowki, on 12.05.1988 at 12:00 'o' clock in the day that report is Ex.Ka.1. On the basis of this report Patwari has prepared the chik F.I.R. that chik F.I.R. is Ex.Ka. 12 .The entry was made in the G.D., the copy of the G.D. is Ex.Ka. 13. On 12.05.1988 Patwari has also prepared the inquest report of Sidhi Singh, that inquest report is Ex,Ka. 7. Along with inquest report he has also prepared Photo lash that is Ex.Ka.15, Chalan lash Ex.Ka. 16 and letter to Superintendent District Hospital, Pauri Garhwal that is Ex.Ka.17 for conducting the Post-Mortem. After that the dead body was sent for the Post-Mortem. The Post-Mortem of the dead body was conducted on 13.05.1988 at 12:45 P.M. that is Ex.Ka.2. During the course of investigation

the Investigating officer has recorded the statement of the witnesses and the present appellant Mohd. Haneef. Appellant Haneef was arrested by the Police on 15.05.1988 and from his possession one yellow colour Saree was said to be recovered from his house. The recovery memo was prepared and that recovery memo is Ex.Ka. 9. The present appellant was arrested on the basis of the confessional statement of the co-accused Vajir Ahmed. Some articles were also recovered from the possession of the Vajir Ahmed and the Fard was prepared that is Ex.Ka.10. The identification of the recovered items was conducted by the S.D.M., Kotdwar and the identification memo was prepared that is Ex.Ka5. The identification parade of the appellant was conducted by the S.D.M., H.S. Chaturvedi that identification memo is Ex.Ka.11. The co-accused Vajir Ahmed was also medically examined by the pharmacist on 12.05.1988, the injury report is Ex.Ka.4. Ex.Ka3 is the application of the co-accused Vajir Ahmed and Ex.Ka.4 is the injury report of Vajir Ahmed. During the course of investigation the Investigating Officer prepared the map of the place of occurrence that is Ex.Ka. 19. He also took the blood stained clothes of the deceased Sidhi Singh and the Fard was prepared that Fard is Ex.Ka.20. The clothes of deceased were also sent for the chemical examination and the report of the Scientific Officer is Ex.Ka.6. After completion of the investigation the Investigating Officer submitted the charge sheet against the appellant and Co-accused Vajir Ahmed, that charge sheet is Ex.Ka.21.

3. Learned Chief Magistrate, Parui Gahrwal has committed the case to the court of sessions on 17.08.1988 under Section 209 Cr.P.C. after complying the provisions of Section 207 Cr.P.C.

4. Learned Sessions Judge framed the charges against the present appellant Haneef and the co-accused Vajir Ahmed under Section 302 I.P.C. read with section 34 I.P.C., 394 I.P.C. 452 I.P.C. and 412 I.P.C. on 7.11.1988. The charges were read over and explained to the appellant Haneef and co-accused Vajir Ahmed who pleaded not guilty and claimed to be tried. Additional charge was also framed against the present appellant Haneef by the learned Sessions Judge, Pauri Garhwal on 06.06.1989 under Section 412 I.P.C. That charge was also read over and explained to him who pleaded not guilty and claimed to be tried.

5. To prove its case the prosecution has examined P.W.1 Uttam Singh who is complainant of the case, P.W.2 Dr. Lalit Gusain, who has conducted the Post-Mortem of deceased Sidhi Singh, P.W.3 Madan Singh Neeraj Pharmacist, who has medically examined the co-accused Vajir Ahmed, P.W.4 K.S. Atoriya S.D.M., who has conducted the identification of the recovered articles, P.W.5 Jagat Singh Rawat, who is the witness of the Panchayatnama before whom the said Saree was said to be recovered from the possession of the appellant. P.W.6 H.S. Chaturvedi, who has conducted the identification parade of the present appellant and co-accused Vajir Ahmed in the Jail, P.W.7 Smt. Maheshawari Devi, who is an injured eye witness, P.W.8 Km. Anandi Devi, who is an eye witness and P.W.9 is Mohan Chandra Dobriyal, Patwari, Investigating Officer (*In the rural areas of hill Districts of Uttarakhand Patwaris are vested with police powers*). After that the statement of the appellant was recorded under Section 313 Cr.P.C. who denied the allegations made against him.

6. After appreciating the evidence on record and hearing the counsel for both the parties, the learned Sessions Judge has acquitted the present appellant under Sections 302 I.P.C. read with section 34 I.P.C., 394 I.P.C. & 452 I.P.C. and has convicted the present appellant under Section 412 I.P.C. and awarded a sentence for three years R.I.

7. Against the judgment and order dated 4.12.1991 passed by Sessions Judge, Pauri Garhwal, the appellant has filed the present appeal.

8. I have heard Sri G.S. Negi, learned amicus curiae for the appellant and Sri Harish Pujari, learned Addl. GA for the State.

9. To prove its case prosecution has examined P.W.1 Uttam Singh, who is not an eye witness. He has stated that he, his mother and sisters were residing in village Jhatri in May 1988. He has further stated that the incident took place in the night of 11th May 1988 at about 9:00 P.M. and on the day of occurrence, Sidhi Singh father-in-law of his sister had also come to his house. On the day of occurrence he had gone to Dadamandi to see play and remained there in that night. He has further stated the occurrence took place in the night of 11.05.1988 and on 12.05.1988 in the morning when he came to his house he saw the door latched from the outside. He opened the latch and went inside and saw Sidhi Singh lying dead on the ground. His mother has also received the Injury. His mother and sisters told the incident and on the basis of the information received from his mother and sisters he lodged report. He has further stated that his mother and sisters also received the injuries in the incident. He also inquired

about the looted property and mentioned the same in the report i.e. Ex.Ka.1 lodged on 12.05.1988 at 12:00 P.M. in the noon. This witness was cross examined at length by the defence counsel but nothing was come out from his evidence which may create any doubt in his evidence. The evidence of this witness is reliable.

10. P.W.2 is Dr. Lalit Gusain, who has conducted the autopsy of dead body of Sidhi Singh on 13.05.1988 at 12:45 P.M. He found the following ante mortem injuries on his dead body:-

1. *Incised wound on lateral aspect of left wrist joint extending to anterior and posterior aspect of left forearm, obliquely placed 12cm. x 4cm. x bone deep. Blood clot present. Margins are bevelled and sharp. Lower edge towards the palm is sharp. Upper edge is contused. Left radial artery and left mediam nerve, muscle and ligaments are clearly divided at the side of wound. There is complete dislocation of left radio carpal joint.*
2. *Incised wound on anterior aspect of left forearm obliquely placed Elliptical in shape, 6cm. x 1cm.x muscle deep, blood clot present in wound 21cm. below the lateral epicondyle of left elbow joint.*
3. *Incised wound on anterior medial aspect of left culsetal fossa transversely placed 3cm x 0.5 cm x muscle deep. Blood clot present.*
4. *Incised wound between right thumb and right index finger Extending anteriorly to palmor aspect & posteriorly to dorsal aspect of right palm 8 cm. x 2cm & 3cm deep. Margins sharp. Edges are abraded. Blood clot present. Soft tissues, muscles, ligaments nerves & vessels are clearly divided at the side of wound.*
5. *Multiple abraded contusion on lower part of post aspect of right upperarm and post aspect of right elbow joint and upper part of post aspect of right forearm in an area of 20 cm. x 8 cm. Bluish blithe in colour.*
6. *Abraded contusion on lower aspect of upper part of right upper arm in an area of 5cm. x 4 cm. below the top of right shoulder joint. Bluish blithe in colour.*

In his opinion the death was caused due to shock and hemorrhage and the injuries were caused by sharp edged weapon. He proved post mortem report i.e. Ex.Ka.2.

11. P.W.3 Madan Singh Neeraj, who was the Pharmacist at P.H.C., Paukhal. He has stated that on 12.05.1988, at 11:35 A.M. he gave first aid to Vajir Ahmed. On enquiry Vajir Ahmed had told that he got injuries by a fall from the tree. He obtained this information in writing from Vajir Ahmed and Photostat copy is Ex.ka.3. He also proved the copy of the injury register Ex.Ka. 4.

12. P.W. 4 is Sri K.S. Atoriya, Development Officer who was S.D.M., Kotdwara on 7.06.1988. He has stated that he held the identification of the property connected with this case. He proved the proceedings of identification and proved memo i.e. Kx.Ka.5. The goods identified were exhibited as Ex.2 to Ex.7.

13. P.W.5 is Jagat Singh Rawat, who has stated that he was Panch appointed by Patwari at the time of Panchayatnama. He proved his signature on Panchayatnama i.e. Ex.Ka.7. he has stated that on 16.05.1988 on pointing out of accused Vajir Ahmed one 'Dau' was recovered by Patwari and its Fard was prepared, that is Ex.Ka.8. The said 'Dau' was Ex.1 he has stated that on 15.05.1988 in his presence search was made at the house of appellant Haneef by Patwari and one yellow Saree was recovered which was taken into possession and was sealed on the spot and its Fard was prepared as Ex.Ka.9 The said Saree was proved as material Ex.2 He has further stated that on the same day search was made on the house of the accused Vajir Ahmed and looted property Ex.3 to Ex.7 were recovered and its Fard was prepared that is Ex. Ka. 10. He has stated that both the accused were arrested in his presence and were made Baparda. This witness was cross-examined at length by the defence counsel but nothing was come out from his

evidence which may create any doubt in his evidence. The evidence of this witness is reliable.

14. P.W.6 is Sri H.S. Chaturvedi, S.D.M., Parui Garhwal. On 27.07.1988 he held identification parade of appellant Haneef and co-accused Vajir Ahmed in District Jail, Pauri. He has stated that the identification was held according to rules and he proved identification parade memo Ex.Ka.11.

15. P.W.7 is Smt. Maheshwari Devi, who has stated that her house in village Jhatri was at the distance of one furlong from Abadi. On the night of occurrence she was in the house along with her two daughters and father-in-law of one daughter. She stated that her son had gone to Dadamandi. She has further stated that at the time of the occurrence they were going to sleep and she came out of her hose because her daughter Anandi wanted to ease herself and as soon as she came out a miscreant with a beard was standing out side. He had a 'Dau' and in the scuffle she received injuries in her hand. Her elder daughter also came out to save her and she also received injuries. They raised alarm and Sidhi Singh also came out. The miscreants caught hold of Sidhi Singh and caused injuries to him. He fell down. One miscreant remained standing with 'Dau' and the two miscreants went inside the house and looted the property. The miscreants were identified by her. She stated that the appellant in the court was the same miscreant who was standing with 'Dau'. She gave details of the looted property. She further stated that the miscreants went away after putting latch on the door. The door was opened from outside when Uttam Singh, complainant son of P.W.7 Smt. Maheshwari Devi came in the morning on 12.05.1988 at 6:00 A.M. and he

Opened the door removing the latch then she and her daughter narrated the incident to Uttam Singh and on the basis of that information Uttam Singh lodged the report. She stated that Sidhi Singh had died before her son reached the house. She has further stated that she had gone to identify the miscreants in the jail. She put her hand on appellant-accused Haneef and stated that he was identified by her in the jail. She has further stated that the appellant-accused was seen by her at the time of occurrence and thereafter at the time of identification and was not seen by her in between and appellant was not known to her. She has further stated that she also identified the looted property in the court S.D.M. This witness was cross examined at length by the defence counsel but nothing was come out from his evidence which may create any doubt in his evidence. The evidence of this witness is reliable.

16. P.W.8 is Km. Anandi, who has also stated that the incident had taken place on 11.05.1988 at about 9:00 P.M. She came outside the house along with her mother after taking the food. As her mother opened the door, a person having beard had pulled her mother, who was armed with 'Dau'. In that incident her mother received the injury and when she tried to save her mother she also received the injuries. Then her mother gave a call to Sidhi Singh, father-in-law of her sister, who was present in her house. The miscreants had caused the injuries to Sidhi Singh due to which he had fallen down on the earth. The miscreants pushed her and her mother Maheshwari Devi inside the room and one miscreant was standing on the door and two miscreants had entered in the room and looted the property. She had identified the miscreants in the light. The miscreants had looted the clothes,

ornaments, cash, watches and other articles form her house. The miscreants had latched the door from outside. In the next day morning her brother came in the house then she narrated the incident to him. She had her mother were medically examined. She also identified the appellant/accused in Pauri Jail and she also identified the appellant/accused in the court. She has further stated that she also identified the looted articles in the Tehsil Kotdwar. This witness was cross examined at length by the defence counsel but nothing was come out from his evidence which may create any doubt in his evidence. The evidence of this witness is reliable.

17. P.W.9 is Mohan Chandra Dabriyal, who investigated this case. He was Patwari of Patti Silla-III in May 1988. he has stated that on 12.05.1988 report Ex.Ka.1 was lodged by Uttam Singh. Case was registered and chick F.I.R. was proved as Ex.Ka.12. The entry was made in the G.D. The copy of the G.D. is Ex.Ka.13. He has further stated that he went on the spot the same day and held inquest. He proved Challan lash, Naksha lash and letter to Superintendent District Hospital, Parui Garhwal as Exs. 15, Ka. 16 & Ka. 17. He also proved the site plan. During the course of investigation he has recorded the statements of the witnesses and the injured persons. He has further stated the present appellant was arrested by him on 15.05.1988. He recovered the looted property from the house of the Vajir Ahmed and prepared the Fard Ex.ka. 10 and he also recovered a yellow saree from the possession of the present appellant Haneef and prepared the Fard Ex.Ka. 9. He obtained result of identification of accused and property and after completing investigation, submitted

Charge-sheet Ex.Ka.21 against the appellant/accused and co-acused Vajir Ahmed on 27.07.1988.

18. After that the statements of the appellant was recorded under Section 313 Cr.P.C. who had denied the allegations made against him and in defence he did not produce any oral or documentary evidence.

19. During the course of the trial co-accused Vajir Ahmed had run away from the Lockup at Lansdowne and was not arrested. Hence, learned Sessions Judge on 17.04.1989 had separated the trial of the present appellant from the co-accused Vajir Ahmed and New No. 22-A/1988 was written in the trial of Hanif Ahmed.

20. After considering the facts and circumstance and the evidence the learned Sessions Judge has acquitted the present appellant under Section 302 I.P.C. read Section 34 I.P.C., 394 I.P.C. & 452 I.P.C. for proving the case under Section 302 I.P.C. read Section 34 I.P.C., 394 I.P.C. & 452 I.P.C. the Sessions Judge has not relied on the statement given by P.W.7 Smt. Maheshwari Devi and P.W.8 Km. Anandi Devi who were the injured and the eyewitness of the case. P.W. 1 Uttam Singh, had written a report on hearsay and on the basis of information gathered from his sister and mother. P.W.2 Dr. Lalit Gusain who has conducted the autopsy of Sidhi Singh formal witness. P.W.3 Madan Singh Neeraj is a person who has conducted the medical examination of the co-accused Vajir Ahmed. P.W.4, who was the S.D.M., Kotdwar on the date of the identification of the articles on 7.06.1988 P.W.5 Jagat Singh Rawat before whom the said Saree was recovered from the house of the present appellant on 15.05.1988 P.W.6 H.S. Chaturvedi S.D.M., Pauri Garhwal, who has conducted the

Identification proceedings on 27.07.1988 in Pauri Jail but this identification was not held as per the law by the trial court P.W.7 Smt. Maheshwari Devi and P.W.8 Km. Anandi Devi who were the injured eye witness. Learned Sessions Judge has convicted the present appellant on the basis of the facts related to the recovery of one saree from his house for that the prosecution has examined P.W.7 Maheshwari Devi and P.W.8 km. Anandi Devi. P.W.7 Smt. Maheshwari Devi and P.W.8 Km. Anandi Devi had identified the sarree which was recovered from the house of appellant/accused in the identification proceeding held by K.S. Atoriya, S.D.M. Kotdwar on 7.06.1988 that identification memo is Ex.Ka-5 and the said saree is Ex.2. That identification proceeding was further proved in the statement of P.W.4 K.S. Atoriya he has proved the identification memo Ex. Ka-5 and Saree Ex.2 which was identified before him as per the rules. Recovery of the said saree is proved from the statement of P.W.5 Jagat Singh Rawat who has stated that on 15.05.1988 the yellw colour saree was recovered before him from the house of the appellant/accused and the appellant/accused was arrested by the police on the same day by the Patwari, Investigating Officer and the fard was prepared that is Ex.Ka.9 and the saree is Ex.2 Thus the said saree which was looted by the miscreants on 11.05.1988 at about 9:00 P.M. in village Jhatri, Patwari Circle Silla-III from the house of the complainant was recovered from the house of the present appellant/accused on 15.05.1988 in the presence of P.W.5, Jagat Singh Rawat. That saree was identified by the P.W.7 Maheshwari Devi and P.W.8 Km. Anandi Devi who were the injured eye witness in the identification held by S.D.M. Kotdwar on 7.06.1988

21. Thus, from the evidence discussed above, it is well established beyond reasonable doubt that the prosecution has proved its case against appellant Haneef for the offence punishable under section 412 I.P.C. The judgment and order dated 04.12.1991 passed by learned Sessions Judge is perfectly justified and correct as per the law and on the basis of the evidence. I am in full agreement with the judgment and order passed by learned Sessions Judge.

22. Shri G.S. Negi, learned amicus curiae, has also submitted that the conviction made by the learned Sessions Judge on the basis of the evidence produced by the prosecution is correct and justified. He has further submitted that the sentence awarded to the appellant on the basis of the circumstances is severe. He has submitted that the incident was said to be taken place about 19 years before and the appellant was about 25 years of age at that time and it was his first offence. Now he is a married person. He is living with his children and after that offence he has not committed any offence. On the basis of the circumstances he has submitted that the appellant may be released on the sentence he has already undergone. He has further submitted that the appellant was remained in jail during the trial from 15.05.1988 to 22.09.1989 and after conviction in the above said case from 4.12.1991 to 21.01.1992. He has submitted that the appellant was remained in jail for one year and six months and his sentence may be reduced to the period already undergone for one year and six months. Sri Harish Pujari, learned Addl. GA has also conceded the same point.

23. In view of the above facts and circumstances it is just and proper to reduce the sentence of the appellant for one year and six months already undergone.

24. The appeal is accordingly partly allowed. The conviction under Section 412 I.P.C. is confirmed and sentence is modified up to the extent that instead of three years R.I., the appellant shall serve one year and six months rigorous imprisonment, the period already undergone by the appellant.

25. Let the record of the case be sent to the trial court concerned for compliance of order.

(Dharam Veer, J.)

05.11.2007
Arti